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		<b>PAGES:</b>	5

**CONFIDENTIAL**  
**703-306-4520**

**Message:**

06 February 2003

**FAX RECEIVED**

FEB 06 2003

**GROUP 3700**

**RE: Application No: 08/952,368**  
**Filing date: 17 Nov. 1997**  
**Inventor: Phipps**

Dear Examiner Thompson:

I am writing in regards to the *Notice of Non-Compliance with the Requirements of 37 CFR 1.192(c)* mailed 04 September 2002.

**Summary**

Appellants filed an Appeal Brief on May 24th 2002 in response to a Final Rejection presented in the Office Action mailed 19 June 2001, paper 12. The Examiner issued a Notification of Non-Compliance, mailed on 04 September 2002, paper 17. Appellants, while preparing to respond to said Notification became aware of several problems with the recitation of the issues on Appeal. The Appellants and the Examiner have conducted several phone interviews regarding these issues, but as of this date the matters are still unresolved. Appellants have prepared this communication for the Examiner in hopes of clearly presenting the Appellants concerns and position regarding the interpretation of the rejections and arriving at a mutual understanding of the exact nature of the rejections so that this Appeal can move forward.



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Detailed discussion and analysis of the claim rejections are now presented.

#### A. Paragraph 6d of Appeal Brief.

The Examiner has stated in the Non-Compliance paper that paragraph 6d does not properly represent the rejection as stated in the last office action, paper 12, dated 19 June 2001. Paragraph 6d of Appellants' Appeal Brief reflects in part the rejection presented in the last Office Action in paragraph 6 on page 3. This rejection states :

*"Claims 1-10 and 12-25 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Tapper ('334) and/or Haak et al."* Paragraph 6, page 3, Paper 12, Office Action mailed 19 June 2001.

In terms of the 102(b) rejection, Applicants and Examiner are in agreement. The above cited rejection should be interpreted as being two separate 102(b) rejections, one based on Tapper ('334) and the other Haak. These rejections are reflected in Applicants' Appeal Brief as paragraphs 6b and 6c.

However, there is disagreement in regards to how to interpret the 103(a) rejections. In Applicants' Appeal Brief, paragraph 6d, Applicants state that the 103(a) rejection should be interpreted as being a single 103(a) rejection over Tapper in view of Haak.

The Examiner, in the Notification of Non-Compliance, paper 17, states that the 103(a) rejections should be understood to be two separate 103(a) rejections and that the existing paragraph 6d should be replaced by the following:

*d.<sup>1</sup> Whether Appellants' claims 1-10 and 12-25 are properly rejected under 35 U.S.C. § 103(a) as being obvious over Tapper (U.S. Patent No. 4,822,334).*

*d.<sup>2</sup> Whether Appellants' claims 1-10 and 12-25 are properly rejected under 35 U.S.C. § 103(a) as being obvious over Haak et al. (U.S. Patent No. 5,203,768).*

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However, Appellants mistakenly misstated the basis for the rejection. As originally put forth in the most recent Office Action, the rejection stated:

*"Claims 3-6, 12-13, 17-19, and 21-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tapper ('334) in view of Sorenson et al. (WO 91/15258) and/or Haak et al."* (emphasis added) Paragraph 8, page 5, Office Action mailed 19 June 2001, Paper 12.

The Examiner did not raise any objections to Appellants' erroneous presentation of this rejection. Based upon the discussion of similar language provided by Appellant in Section A above, Appellants believe this rejection can only be interpreted as being three 103(a) rejections:

1. Tapper plus Sorenson
2. Tapper plus Haak
3. Tapper plus Sorenson plus Haak.

Appellant's respectfully assert that the only proper way to proceed with this Appeal is for the Examiner to issue a new Notification of Non-Compliance with a proper recitation of the Issues on Appeal being presented consistent with the above discussion. This would require only one additional paper - a new Notification of Non-Compliance. With the Issues on Appeal having been properly framed, Appellants are prepared to rapidly respond to such new Notification with a corrected Appeal Brief which would facilitate the handling of this Appeal.



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Appellants respectfully request a phone interview with the Examiner as soon as possible in order to discuss the matters presented herein. Appellant is free to participate in this interview at any time of the Examiner's choosing. If the Examiner would kindly communicate whatever date and time is convenient for the Examiner, Appellant will contact the Examiner at that time.

Sincerely,

Owen Bates

The information contained in this facsimile message is confidential information intended only for the use of the addressee named above. If the recipient of this message is not the addressee, or the employee or agent responsible to deliver it to the addressee, you are hereby notified that any distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please notify us immediately by telephone and return the original message to us by mail at the address below. Thank you.



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Upon reflection, Appellants assert the neither position is correct. Appellants assert that the "AND/OR" language in the original rejection, when read with regard to the 103 rejection has to be understood to be a 103 rejection which finds the Applicants' claims to be obvious over

1. Tapper ('334) AND Haak et al. as well as
2. Tapper ('334) OR Haak et al.

Thus when the "AND/OR" language is fully considered, there really are three 103(a) rejections:

1. Tapper in view of Haak (as presented in Appellant's Brief, paragraph 6d);
- 2a. Tapper alone (Examiner's paragraph d.<sup>1</sup>); and
- 2b. Haak alone (Examiner's paragraph d.<sup>2</sup>).

Appellants believe the above interpretation of the rejection cited in paragraph 6 of the latest Office action is correct and a new Notification of Non-Compliance should be issued by the Examiner to properly recite these rejections.

## B. Paragraph 6e of Appeal Brief.

Appellants in the Appeal Brief presented the following paragraph 6e as one of the issues on Appeal:

*"Whether Appellants' claims 3-6, 12-13, 17-19 and 21-23 are properly rejected under 35. U.S.C. § 103(a) as being unpatentable over Tapper (U.S. Patent No. 4,822,334) in view of Sorenson et al. (WO 91/15258)."*

This recitation of the issues on Appeal was based upon paragraph 8 of the most recent Office Action mailed 19 June 2001, paper 12.